Department of the Treasury

Internal Revenue Service Office of Chief Counsel

Notice

CC-2010-017

September 22, 2010

Procedures for Processing and Handling of Appeals from Decisions

Upon incorporation

Subject: Under Circular 230 **Cancel Date**: into CCDM

Purpose

This notice describes the procedures within the Office of Chief Counsel for the processing and handling of appeals from decisions of Administrative Law Judges for disciplinary cases brought under Circular 230, 31 C.F.R. Subtitle A, Pt. 10.

Background

The Office of Professional Responsibility establishes, communicates, and enforces consistent ethical standards of competence, integrity, and conduct for tax professionals who represent taxpayers before the Internal Revenue Service.

OPR derives its grant of authority from the Treasury Practice Statute, 31 U.S.C. § 330, which invests the Secretary of the Treasury with authority to regulate the practice of persons before the Department of the Treasury and from the Circular 230 regulations which govern the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers before the Service. Section 10.1(a) establishes OPR within the Service and provides that the Director of OPR will be appointed by the Secretary of the Treasury (or delegate).

General Legal Services advises and represents OPR in disciplinary cases before Administrative Law Judges. CCDM 39.4.1.2.

Appellate Authority

Pursuant to a series of delegations (Treasury Order 107-24, General Counsel Order No. 9, and CC-2009-020), Ronald Pinsky, Appellate Authority, hears and independently decides appeals to the Secretary of the Treasury from the decisions of Administrative Law Judges in OPR cases. He does not report to anyone within the Office of Chief Counsel or the Service with respect to those matters delegated to him as the Appellate Authority. The Appellate Authority's delegated authority is separate and apart from his other assigned duties within the Office of Chief Counsel.

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The Circular 230 regulations contain rules governing appeals from the decisions of Administrative Law Judges in OPR cases in sections 10.77 and 10.78.

Any party to an OPR proceeding may appeal the decision of the Administrative Law Judge to the Secretary of the Treasury (or delegate). The appeal must include a brief that states exceptions to the decision and supporting reasons for such exceptions. Section 10.77(a). The appeal and brief must be filed, in duplicate, with the Director of OPR within 30 days of the date that the decision is served on the parties. The Director will immediately furnish a copy of the appeal to the Appellate Authority. Section 10.77(b).

Under his delegated authority, the Appellate Authority makes the agency's final decision. The agency's final decision should be made within 180 days after receipt of the appeal. Section 10.78. In the absence of an appeal to the Appellate Authority, the decision of the Administrative Law Judge becomes the agency's final decision 30 days after the date of the Administrative Law Judge's decision. Section 10.76(d).

OPR Initiated Appeals

GLS evaluates the initial decision of the Administrative Law Judge and advises OPR of any adverse findings of fact or determinations of law. CCDM 39.4.1.3.7(1). If OPR determines that an appeal is warranted, GLS prepares an appeal, a brief in support thereof, and any reply or supplemental briefs that are required. <u>Id</u>. GLS serves the practitioner with OPR initiated appeals, briefs, responses, etc. <u>Id</u>. GLS is responsible for confirming that the necessary documentation for an appeal has been submitted to the Appellate Authority. CCDM 39.4.1.3.7(3).

Practitioner Initiated Appeals

GLS prepares briefs in opposition to a practitioner's appeal. CCDM 39.4.1.3.7(2). OPR sends the Notice of Appeal to the appropriate GLS Area Counsel with a copy to the Claims, Labor & Personnel Law Branch of GLS. <u>Id</u>. GLS coordinates with OPR and the Office of Associate Chief Counsel, Procedure & Administration, as appropriate. <u>Id</u>. GLS is responsible for confirming that the necessary documentation for an appeal has been submitted to the Appellate Authority. CCDM 39.4.1.3.7(3).

Case Processing

OPR transmits the appeal, brief, and OPR's original case files to the Legal Processing Division of P&A. LPD transmits the appeal, brief, and OPR's original case files to the Appellate Authority. The Appellate Authority's secretary opens a legal file for the Appellate Authority. OPR subsequently transmits additional documents to the Appellate Authority, as they are received, and the Appellate Authority associates those documents with OPR's original case files. If the Appellate Authority does not receive all necessary documents, the Appellate Authority may request them by contacting the parties informally or by issuing an appropriate order that the deficiency be cured.

Extensions of Time to Appeal

When an extension of time to file an appeal is sought, the Appellate Authority seeks the views of the non-moving party, unless the request for extension states the position of the non-moving party.

Preparation of Appellate Opinion

The Appellate Authority prepares an opinion, affirming the decision of the Administrative Law Judge or reversing, modifying, and/or remanding the decision. As directed by the Appellate Authority, an attorney on the Appellate Authority's staff performs general legal research and proofreads appellate opinions without commenting on the legal adequacy or conclusions of the opinions. This attorney performs these duties separate and apart from other assigned duties within the Office of Chief Counsel.

As is necessary, the Appellate Authority issues orders to the parties, <u>e.g.</u>, to brief issues of law and to ensure the case file is complete. The Appellate Authority also may initiate conference calls with the parties to discuss various issues.

<u>Transmission of Appellate Opinion</u>

The Appellate Authority transmits the appellate opinion to the practitioner and the practitioner's representative by overnight mail (for street addresses) or certified mail (for P.O. boxes), with copies to the GLS attorney who litigated the case, the Director, OPR, and the Administrative Law Judge who authored the appealed opinion (all by first-class mail). The day after service, the Appellate Authority e-mails the appellate opinion to the Litigation Liaison in OPR and the GLS attorney who litigated the case.

Case Closings

The Appellate Authority closes the case and returns OPR's original case files and copies of all pleadings, as well as evidentiary materials, to OPR or GLS. If the material is sent to GLS, GLS returns it to OPR to maintain in its closed files as the official case file. IRM 39.4.1.3.8(1).

The Appellate Authority retains the Appellate Authority's legal file for one year following closing. Thereafter, the Appellate Authority forwards the legal file to LPD for storage in accordance with applicable record retention schedules.

Questions concerning the foregoing may be directed to George Bowden at (202) 622-3400.

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(Procedure & Administration)